

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 67

Mr. Payne H. Ratner, Jr.
Ratner, Mattox, Ratner, Ratner & Barnes
403 Columbian Title Building
820 Quincy Street
Topeka, Kansas 66612

Re: State Banking Commissioner--Records--Public Access

Synopsis: Articles of incorporation filed pursuant to K.S.A. 9-801 and verified statements in support of applications for a certificate of authority pursuant to K.S.A. 9-804 are documents of public record, available for public inspection pursuant to K.S.A. 45-201. Financial statements required by K.A.R. 17-16-2 are confidential pursuant to the terms of that regulation, and information derived from the examination of banks is confidential under K.S.A. 9-1712.

* * *

Dear Mr. Ratner:

You inquire whether applications for incorporation of a bank and for authority to transact the banking business are documents of public record and hence available for inspection by the public. You enclose an opinion of Attorney General William Ferguson, dated October 18, 1963, concluding that such documents are confidential, and may not be disclosed. I concur in your judgment that, on the contrary, these documents are indeed subject to public access under the Kansas public records law, K.S.A. 45-201.

K.S.A. 9-801 provides no banking corporation shall be incorporated until the articles of incorporation have been submitted to and approved by the state banking board. The articles must include the names and addresses of its stockholders, the amount of common

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stock subscribed by each, and such other information as is required by law. They must be acknowledged and subscribed by at least five of the stockholders of the proposed bank who are residents of this state, and the full amount of common stock, including surplus and undivided profits as required by this act, shall be subscribed before the articles of incorporation are filed. The bank so incorporated may not commence the business of banking, however, until it has secured the certificate of authority issued by the Banking Commissioner pursuant to K.S.A. 9-804. That section provides that when the capital of the bank shall have been paid in, the president or cashier shall transmit to the commissioner a verified statement showing the names and addresses of all stockholders, the amount of stock subscribed by each, and the amount paid in by each. The commissioner shall then examine the bank, and if he determines that it has been organized as provided by law and has complied with all applicable provisions, he shall issue a certificate of authority authorizing it to transact the general banking business.

K.S.A. 45-201, of the Kansas public records law, states in pertinent part thus:

"All official public records of the state, . . . commissions . . . [and] agencies . . . which records by law are required to be kept and maintained, except those . . . records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen. . . ."

The articles of incorporation required to be filed by K.S.A. 9-801, and the verified statement submitted pursuant to K.S.A. 9-804 in application for a certificate of authority, become, upon filing, official records of the State Banking Board, which are obviously required to be kept and maintained in the offices of the Board.

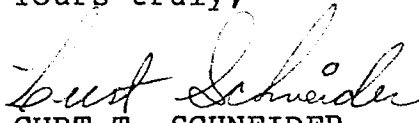
Attorney General Ferguson relied in his opinion upon K.S.A. 9-1712, which provides that all information gathered by the Commissioner in making an investigation and examination of any bank or trust company shall be deemed confidential information. He reasoned that the examination required by K.S.A. 9-804 prior to issuance of the certificate of authority fell within the confidentiality provision of K.S.A. 9-1712, and that because "the

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information which the commissioner is required by law to obtain in his initial examination of a bank is to a great extent the same information a bank must include in its application for incorporation," the confidentiality provision respecting examination should be construed to apply to the articles of incorporation and application for certificate of authority.

The confidentiality required by K.S.A. 9-1712 extends by the terms of that statute only to information derived by the commissioner from the examination and investigation of banks. That confidentiality applies, as General Ferguson stated; to the examination required by K.S.A. 9-804. It does not apply, however, to any information other than that derived from such examinations. The information contained in articles of incorporation and in the application for a certificate of authority is not furnished to the Commissioner as a result of any examination, but is expressly required to be furnished by the incorporators. The confidentiality requirement of K.S.A. 9-1712 may not be construed to thwart the plain requirements of K.S.A. 45-201. When the application and articles for incorporation and the verified statement in support of issuance of a certificate of authority are filed, they become official records of the State Banking Board, and are therefore open to public inspection. Information which in fact is derived from examinations remains confidential, as do financial statements specifically provided to be so held under K.A.R. 17-16-2, as adopted by the Board.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj